IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION NO. 108 OF 2005

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri S.P. Bhandarkar, Advocate for the applicants.
Shri N.R. Borkar, Advocate for the respondents.

CORAM : B.R. GAVAI, J.
28TH AUGUST, 2006

By way of present application, the applicants challenge the order passed by the learned Joint Civil Judge, Junior Division, Gondia dated 29th June, 2005 thereby rejecting the application of the present applicants below Exhs.9 and 30 in Regular Civil Suit No. 87 of 2003.

The respondent No.1 has filed the suit against the present applicants for recovery of money. In the said suit, an application came to be filed by the present applicants under Order VII Rule 11(d) on the ground that the suit was barred by limitation. The learned trial Court found that the suit was maintainable and as such rejected the application. Hence, this Civil Revision Application.

Heard Shri S.P. Bhandarkar, the learned

Counsel appearing on behalf of the applicants and Shri N.R. Borkar, the learned Counsel appearing on behalf of the respondents.

Shri S.P. Bhandarkar, the learned Counsel for the applicants submits that the reasoning given by the learned trial Court that the plaintiffs are entitled to benefit of Section 10 is erroneous. He submits that the reasoning given is on the premise that the Trust is governed by the Indian Trust Act. He submits that as a matter of fact, the Society is governed by the Societies Registration Act and as such the benefit of Section 10 of Limitation Act is not applicable.

As against this, Shri N.R. Borkar, the learned Counsel for the respondents submits that the benefit under Section 10 is available to any Trust. He further submits that perusal of Section 6 of the Societies Registration Act would also reveal that the word "trustees" has been used in the said Section. He submits that since the provisions of Section 10 are beneficial in nature, the Trust, the liberal interpretation is required to be given to it.

I am of the view that the issue of limitation is a mixed question of law and facts. In that view of the matter, no interference is called for at this stage. However, it is made clear that in so far as the

observations made by the learned trial Court that the society is governed by the Indian Trust Act, are only prima facie in nature. The learned trial Court will not consider said observations at the stage of final hearing of the suit. The said question would be decided by the learned trial Court on the basis of evidence that would be led. With the aforesaid observations, the petition stands disposed of.

JUDGE

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